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UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIAUNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIA

In re:) Case No. 15-27614-B-13 ✓
)
 STEPHEN AUSTIN DeGUIRE and) DC No. WFH-1
 SANDRA KAY DeGUIRE,)
)
 Debtors.)

In re:) Case No. 15-27615-B-13
)
 COREY CLINTON DeGUIRE,) DC No. WFH-1
)
 Debtor.)

**MEMORANDUM DECISION AND ORDER GRANTING IN PART AND DENYING IN
 PART MOTION TO DISMISS CASE NO. 15-27614, GRANTING MOTION TO
 DISMISS CASE NO. 15-27615, AND DENYING CONFIRMATION OF CHAPTER 13
 PLANS IN CASE NOS. 15-27614 AND 15-27615**

INTRODUCTION

Presently before the court is a motion by Maricopa Orchards, LLC to dismiss the following related Chapter 13 cases: (1) In re Stephen Austin DeGuire and Sandra Kay DeGuire, Case No. 15-27614; (2) In re Corey Clinton DeGuire, Case No. 15-27615. There are also pending motions to confirm Chapter 13 plans filed in both cases.

Except for a few matters particular to the respective individuals such as the debtors' ages, families, and income, the facts relevant to the court's disposition of Maricopa's motion to dismiss each case are identical and so are the respective debtors' oppositions and declarations. According to each of the debtors, the key facts in both cases are either undisputed or not reasonably subject to dispute. Each of the debtors in both cases

1 also consent to the resolution of all factual disputes under
2 Federal Rule of Civil Procedure 43(c) made applicable by Federal
3 Rule of Bankruptcy Procedure 9017. See also LBR 9014-1(b)(1)(A).

4 The court has reviewed and considered the motions to
5 dismiss, the oppositions, the replies, the debtors' additional
6 evidentiary objections, all related declarations and exhibits,
7 and the supplemental points and authorities the court requested
8 from the parties. The court has also heard and considered the
9 arguments and statements of counsel made on the record in open
10 court on December 9, 2015. For the reasons explained below,
11 Stephen DeGuire will be dismissed as a debtor in Case No.
12 15-27614 and the case filed by Corey DeGuire as Case No. 15-27615
13 will be dismissed. Dismissal is required because both Stephen
14 DeGuire and Corey DeGuire are each ineligible under 11 U.S.C.
15 § 109(e) to be debtors under Chapter 13 of the Bankruptcy Code.¹
16 Stephen DeGuire and Corey DeGuire are ineligible to be Chapter 13
17 debtors because each have noncontingent, liquidated, unsecured
18 debts that exceed the statutory cap of \$383,175. Confirmation of
19 the plans filed in both cases will also be denied.

20
21 PROCEDURAL BACKGROUND

22 Stephen DeGuire and Corey DeGuire filed petitions for relief

23
24 ¹Sandra DeGuire may, if she chooses, remain a Chapter 13
25 debtor even if Stephen DeGuire is ineligible under § 109(e). See
26 11 U.S.C. § 302; In re Tabor, 232 B.R. 85, 92-93 (Bankr. N.D.
27 Ohio 1999) (court determined that, while debtor-husband was
ineligible for Chapter 13 bankruptcy, debtor wife was eligible
because she was only liable for her joint and separate debts and
therefore dismissed as to ineligible spouse).

1 under Chapter 13 of the Bankruptcy Code on September 29, 2015.

2 Each also filed plans of reorganization on October 27, 2015.
3 On November 6, 2015, the DeGuire in both cases filed motions for
4 orders confirming their respective plans and applications for
5 orders shortening the time for a confirmation hearing. The court
6 granted those applications and shortened the time for the
7 confirmation hearing in both cases. Confirmation hearings were
8 scheduled for December 16, 2015.

9 On November 18, 2015, Maricopa filed motions to dismiss both
10 Chapter 13 cases. The court held a preliminary hearing on
11 Maricopa's motions to dismiss on December 9, 2015, at which time
12 it heard and considered the arguments and statements of counsel
13 made on the record in open court. The court also permitted
14 Maricopa to file a reply to the debtors' opposition which
15 Maricopa timely filed.

16 The hearing on Maricopa's motions to dismiss and the
17 confirmation hearings were continued to January 6, 2016, and then
18 to January 20, 2016, after the court identified an issue that was
19 not addressed by the parties and requested additional briefing.
20 By this memorandum decision, the court disposes of Maricopa's
21 motions to dismiss and the confirmation hearings in Case Nos. 15-
22 27614 and 15-27615. And consistent with each of the debtors'
23 consent to resolution of the motions under Federal Rule of Civil
24 Procedure 43(c), made applicable by Federal Rule of Bankruptcy
25 Procedure 9017, no further hearings are ordered.

1 STATEMENT OF FACTS

2 DeGuire Marketing, LLC, was a California limited liability
3 company. It was an international commodities and marketing
4 company, conducting credit sales and marketing with international
5 customers as well as domestic national and regional chains,
6 including Raley's, Costco, Winco, Safeway and Schnucks. Stephen
7 DeGuire and his son Corey DeGuire were the sole members of
8 DeGuire Marketing.

9 The loss of Maricopa's business and mounting legal fees
10 caused DeGuire Marketing to become insolvent. Maricopa informed
11 DeGuire Marketing on December 20, 2013, that it would not
12 continue to do business with DeGuire Marketing for the 2014 crop
13 year. Nevertheless, Maricopa continued to do business with
14 DeGuire Marketing through December 2014. DeGuire Marketing's
15 litigation costs also began to mount in March of 2015, and it was
16 sued by Maricopa in May of 2015. By September 23, 2015, DeGuire
17 Marketing was defunct, dissolved, and wound up. Stephen DeGuire
18 and Corey DeGuire filed their Chapter 13 petitions six days later
19 on September 29, 2015.

20 DeGuire Marketing did not pay Maricopa in full for
21 Maricopa's 2013 almond crop. On or about December 29, 2014,
22 DeGuire Marketing provided Maricopa with an accounting that
23 DeGuire Marketing prepared through December 23, 2014. That
24 accounting reflected sales of Maricopa's 2013 almond crop of
25 \$8,305,034.47 and payments to Maricopa of \$7,318,416.97 for an
26 unpaid difference of \$986,617.50. DeGuire Marketing setoff the
27

1 unpaid difference for the 2013 almond crop with an overpayment it
2 made to Maricopa of approximately \$1,442,439.12 for Maricopa's
3 2010 almond crop.

4 DeGuire Marketing's obligation to Maricopa for the 2013
5 almond crop is listed as a co-debtor obligation of Stephen
6 DeGuire and Corey DeGuire in Schedule F each debtor filed in
7 their respective case. It is also listed as contingent,
8 unliquidated, and disputed. The amount of the obligation is not
9 stated. However, for purposes of Maricopa's motions to dismiss
10 and this decision, that amount is determined to be \$986,617.50.²

11 Schedule H filed by Stephen Deguire and Corey DeGuire in
12 their respective cases also lists both Stephen DeGuire and Corey
13 DeGuire as co-debtors with DeGuire Marketing for the debts listed
14 on their respective Schedules F. That includes DeGuire
15 Marketing's scheduled debt to Maricopa. Schedule H in both
16 Chapter 13 cases also lists Stephen DeGuire and Corey DeGuire as
17 co-debtors of one another.

18
19
20 ²The debtors' oppositions state that DeGuire Marketing is
21 entitled to exercise a valid right of setoff in the amount of
22 \$1,442,439. They also state this setoff is truthfully and
23 accurately stated in the sales summary referenced in the
24 declaration submitted by Tobin Martin in support of the motions
25 to dismiss. The only sales summary referenced in Mr. Tobin's
26 declaration and submitted with the motions to dismiss - and the
27 only sales summary considered by the court for purposes of this
28 decision - is Maricopa's Exhibit B. Since no party disputes the
authenticity, validity, or accuracy of that Exhibit B, the court
uses it to establish the debt for eligibility purposes. The
court calculates that debt as follows: sales of \$8,305,034.47
and receipts paid to Maricopa at \$7,318,416.97 for an unpaid
difference of \$986,617.50.

1 JURISDICTION

2 Federal subject-matter jurisdiction is founded on 28 U.S.C.
3 § 1334. These matters are core proceedings that a bankruptcy
4 judge may hear and determine. 28 U.S.C. §§ 157(b)(2)(A), (L),
5 and (O). To the extent they may ever be determined to be matters
6 that a bankruptcy judge may not hear and determine without
7 consent, the parties nevertheless consent to such determination
8 by a bankruptcy judge. 28 U.S.C. § 157(c)(2). Venue is proper
9 under 28 U.S.C. § 1409.

10
11 DISCUSSION

12 Whether Stephen DeGuire and Corey DeGuire are eligible to be
13 Chapter 13 debtors turns on the amount of their noncontingent,
14 liquidated, unsecured debt. Section 109(e) limits eligibility
15 for Chapter 13 relief to individuals with regular income who owe
16 on the date of the filing of the petition, noncontingent,
17 liquidated, unsecured debts of less than \$383,175.³ Eligibility
18 debt limits are strictly construed. Soderlund v. Cohen (In re
19 Soderlund), 236 B.R. 271, 274 (9th Cir. BAP 1999).

20 Eligibility under § 109(e) is normally determined by a
21 review of a debtor's originally filed schedules, checking only to
22 see if the schedules were made in good faith. In re Scovis, 249

23
24 ³In relevant part, § 109(e) states as follows:
25 Only an individual with regular income that owes, on
26 the date of the filing of the petition, noncontingent,
liquidated, unsecured debts of less than \$383,175 ...
may be a debtor under chapter 13 of this title.

27 11 U.S.C. § 109(e).

1 F.3d 975, 982 (9th Cir. 2001). However, if a bad-faith objection
2 is raised by a party in interest, the bankruptcy court should
3 look past the schedules to other evidence submitted so long as
4 the debt computation for eligibility is determined as of the
5 petition date. Id. at 981 (internal quotations omitted);
6 Guastella v. Hampton (In re Guastella), 341 B.R. 908, 918-921
7 (9th Cir. BAP 2006). Here, Maricopa has raised bad faith and
8 eligibility issues both as to the filing of the two Chapter 13
9 cases and confirmation of the plans filed by each of the
10 respective debtors in those cases. Therefore, the court will
11 conduct a limited inquiry beyond the schedules and will consider
12 limited evidence submitted by the parties including their
13 respective declarations and related exhibits.⁴

14 15 Unsecured and Noncontingent Debt

16 DeGuire Marketing's obligation to Maricopa for the 2013
17 almond crop payment is an unsecured debt. It is also a
18 noncontingent debt inasmuch as it is based on and arises from
19 events that occurred entirely pre-petition. See In re Loya, 123
20 B.R. 338, 340 (9th Cir. BAP 1991); see also Nicholes v. Johnny
21 Appleseed of Wash. (In re Nicholes), 184 B.R. 82, 88 (9th Cir.
22 BAP 1995). By asserting that DeGuire Marketing is entitled to

23
24 ⁴Guastella states this limited inquiry should be conducted
25 without engaging in extensive proceedings and without allowing
26 evidentiary hearings to dominate the inquiry. Guastella, 341
27 B.R. at 918. The court again notes that each of the debtors have
consented to resolution of disputed factual issues without the
need for further hearings. This approach is entirely consistent
with Scovis and Guastella.

1 setoff what it owes Maricopa for the 2013 almond crop with what
2 it paid Maricopa for the 2010 almond crop, each of the debtors
3 acknowledge the existence of a pre-petition debt that is not
4 contingent and does not depend on the occurrence of any event or
5 condition precedent. In other words, in order to exercise a
6 right of setoff, there must first be an existing debt subject to
7 setoff.

8
9 Liquidated Debt

10 The primary dispute is whether this noncontingent, unsecured
11 debt is liquidated. Each of the debtors maintain the debt is
12 unliquidated because it is disputed and not readily
13 ascertainable. Disputed claims are not excluded from the
14 eligibility calculation. Nicholes, 184 B.R. at 90-91 (holding
15 that "the fact that a claim is disputed does not per se exclude
16 the claim from the eligibility calculation under § 109(e), since
17 a disputed claim is not necessarily unliquidated").
18 Nevertheless, each of the debtors maintain the debt is
19 unliquidated because it is disputed as to both amount and
20 liability. It is allegedly disputed as to amount because it is
21 subject to setoff and as to liability because Stephen DeGuire and
22 Corey DeGuire are not personally liable for DeGuire Marketing's
23 obligation to Maricopa. Neither argument is persuasive.

1 Liquidated as to Amount

2 Each of the debtors maintain that DeGuire Marketing's
3 obligation to Maricopa for the 2013 almond crop is not liquidated
4 because the amount is disputed and not readily determinable.
5 They maintain the amount is disputed and not readily determinable
6 because the amount due Maricopa for the 2013 almond crop is
7 subject to a valid right of setoff based on an overpayment to
8 Maricopa for the 2010 almond crop. The court disagrees.

9 A debt is liquidated for purposes of calculating Chapter 13
10 eligibility if the amount of the debt is readily determinable
11 even if liability has not been finally decided. Slack v.
12 Wilshire Ins. Co. (In re Slack), 187 F.3d 1070, 1073-75 (9th Cir.
13 1999). This depends on whether the amount is easily calculable
14 or whether an extensive hearing is needed to determine the amount
15 of the debt. Id. at 1074. "The definition of 'ready
16 determination' turns on the distinction between a simple hearing
17 to determine the amount of a certain debt, and an extensive and
18 contested evidentiary hearing in which substantial evidence may
19 be necessary to establish amounts or liability." Id. at 1073-74
20 (quotation omitted).

21 DeGuire Marketing's obligation to Maricopa for the 2013
22 almond crop can be readily determined from the accounting that
23 DeGuire Marketing prepared and provided to Maricopa in December
24 2014, i.e., \$986,617.50. The amount of that obligation is
25 readily determinable - and thereby liquidated as to amount - even
26 if it is subject to a valid right of setoff. On the latter
27

1 point, the Ninth Circuit is clear: The existence of a right of
2 setoff - even if it exceeds and would negate an amount owed to a
3 creditor - does not convert a liquidated debt into an
4 unliquidated obligation. Sylvester v. Dow Jones and Co. (In re
5 Sylvester), 19 B.R. 671, 673 (9th Cir. BAP 1982); see also
6 Quintana v. Comm'r (In re Quintana), 915 F.2d 513, 517 (9th Cir.
7 1990) (holding that debtors may not use a counterclaim to setoff
8 the amount of debt for Chapter 12 eligibility purposes). Here,
9 the amount of DeGuire Marketing's obligation to Maricopa is
10 easily calculated and readily determinable by subtracting the
11 amount DeGuire Marketing paid Maricopa for the 2013 almond crop
12 from the amount of sales of Maricopa's 2013 almond crop. Any
13 right of setoff that DeGuire Marketing has against Maricopa is
14 not relevant and, thus, is not considered in this determination.
15 Therefore, as to amount, DeGuire Marketing's obligation to
16 Maricopa is liquidated.

17
18 Liquidated as to Liability

19 Each of the debtors offer a number of reasons why Stephen
20 DeGuire and Corey DeGuire are not personally liable for DeGuire
21 Marketing's debt to Maricopa and, thus, why the debt owed
22 Maricopa is unliquidated as to liability. They also maintain
23 that resolution of any personal liability would require
24 significant evidentiary hearings. According to each of the
25 debtors, that means the debt is not readily ascertainable and,
26 therefore, unliquidated. Again, the court disagrees.

1 California courts adhere to the "trust fund doctrine"
 2 pursuant to which all of the assets of a corporation, immediately
 3 upon becoming insolvent, become a trust fund for the benefit of
 4 the corporation's creditors. Berg & Berg Enter., LLC v. Boyle,
 5 100 Cal. Rptr. 3d 875, 893 (Cal. Ct. App. 2009); see also In re
 6 Jacks, 266 B.R. 728, 737 (9th Cir. BAP 2000). The doctrine
 7 imposes fiduciary obligations on directors of the insolvent
 8 entity for the benefit of the entity's creditors. Berg, 100 Cal.
 9 Rptr. 3d at 893-94; Scouler & Co., LLC v. Schwartz, 2012 WL
 10 1502762 *5 (N.D. Cal. 2012). These duties arise at insolvency
 11 and require the avoidance of diverting, dissipating, or unduly
 12 risking corporate assets. Berg, 100 Cal. Rptr. 3d at 894. More
 13 important, these fiduciary duties exist "prior to any wrongdoing
 14 and without reference to [any] wrong." Houng v. Tatung Co.,
 15 Ltd., 2016 WL 145841 at *1 (9th Cir. 2016) (internal quotations
 16 and brackets removed); see also In re Kallmeyer, 242 B.R. 492
 17 (9th Cir. BAP 1999) (fiduciary duties under trust fund doctrine
 18 imposed prior to any defalcation and independently of any
 19 wrongdoing and exist prior to and without reference to it).⁵

20 Each of the debtors attribute DeGuire Marketing's insolvency
 21 to two events: (1) the loss of Maricopa's business and (2)

22
 23 ⁵Although limited liability companies differ from
 24 corporations, the same policies of protecting creditors of
 25 insolvent corporations are applicable to creditors of insolvent
 26 limited liability companies. See In re Houng, 499 B.R. 751, 771
 27 n. 52 (C.D. Cal. 2013), aff'd, 2016 WL 145841 (9th Cir. 2016);
Dollar Tree Stores, Inc. v. Toyama Partners, LLC, 2011 WL 3295420
 at *9 (N.D. Cal. 2011); JPMorgan Chase Bank, N.A. v. KB Home, 632
 F. Supp. 2d 1013, 1027 (D. Nev. 2009); In re McCook Metals,
L.L.C., 319 B.R. 570, 595 (Bankr. N.D. Ill. 2005).

1 mounting legal costs. The former occurred as late as December
2 2014 and the latter occurred between May 2015 (when DeGuire
3 Marketing was hit with a second lawsuit) and September 23, 2015
4 (when DeGuire Marketing was defunct, dissolved, and wound up).
5 But in any event, the debtors' admissions permit the court to
6 conclude that DeGuire Marketing was insolvent at least six days
7 before - and therefore on - the petition date.

8 DeGuire Marketing's insolvency imposed fiduciary obligations
9 on Stephen DeGuire and Corey DeGuire. Those duties extended to
10 all of DeGuire Marketing's creditors and included personal and
11 individual liability to Maricopa for the unpaid balance of
12 Maricopa's 2013 almond crop. That personal liability was
13 noncontingent inasmuch as it was based on a prepetition event,
14 i.e., the insolvency of DeGuire Marketing. Personal liability
15 was also liquidated even in the absence of a determination that
16 the duties were breached because the duties - and thus personal
17 liability - existed prior to any wrongdoing and independent of
18 any wrong. Therefore, just as the amount of DeGuire Marketing's
19 noncontingent unsecured obligation to Maricopa was liquidated at
20 \$986,617.50 on the petition date, so too was the personal
21 liability of Stephen DeGuire and Corey DeGuire for that
22 obligation.

23 The court's conclusion is reinforced by the schedules that
24 Stephen DeGuire and Corey Deguire each filed in their respective
25 cases. Those schedules contemplate each of the debtors' personal
26 liability for DeGuire Marketing's obligation to Maricopa.

1 Schedule H requires a debtor to "[p]rovide the information
2 requested concerning any person or entity, other than a spouse in
3 a joint case, that is also liable on any debts listed by debtor
4 in the schedules of creditors." Whereas Schedule F identifies
5 DeGuire Marketing's debt to Maricopa, Schedule H filed in each
6 Chapter 13 case states that Stephen McGuire and Corey DeGuire are
7 co-debtors on that debt with DeGuire Marketing. Schedule H was
8 signed and filed under penalty of perjury. See Fed. R. Bankr. P.
9 1008.

10 Some courts recognize that "[s]tatements in bankruptcy
11 schedules are executed under penalty of perjury and when offered
12 against a debtor are eligible for treatment as judicial
13 admissions." In re Roots Rents, Inc., 420 B.R. 28, 40 (Bankr. D.
14 Utah) (quoting In re Bohrer, 266 B.R. 200, 201 (Bankr. N.D. Cal.
15 2001)). Other courts treat statements in schedules as
16 evidentiary admissions under Federal Rule of Evidence
17 801(d)(2)(A). In re Heath, 331 B.R. 424, 431 (9th Cir. BAP 2005)
18 (citation omitted); see also In re Vee Vinhee, 336 B.R. 437, 449
19 (9th Cir. BAP 2005); In re Applin, 108 B.R. 253, 259 (Bankr. E.D.
20 Cal. 1989). The Ninth Circuit has not squarely addressed the
21 issue. However, in Perfectly Fresh Farms, Inc. v. U.S. Dep't of
22 Agric., 692 F.3d 960 (9th Cir. 2012), the Ninth Circuit opined
23 that bankruptcy schedules were evidence admissible in statutory
24 PACA claims over liability. Consistent with the Ninth Circuit's
25 opinion in Perfectly Fresh Farms and this court's opinion in
26 Applin, this court views, and therefore in this case will treat

1 and admit, each of the debtors' schedules in general - and
2 Schedules F and H filed in each of the debtors' cases in
3 particular - as evidentiary admissions under Federal Rule of
4 Evidence 801(d)(2)(A).

5 The debtors' evidentiary admissions carry significant
6 weight. They represent each debtors' initial assessment of the
7 extent of their individual liability and the basis for their
8 decision to seek bankruptcy relief. The court also perceives the
9 inclusion of co-debtor liability as an effort by Stephen DeGuire
10 and Corey DeGuire to insulate themselves personally from
11 liability for Maricopa's claim against DeGuire Marketing through
12 the res judicata effect of a confirmed Chapter 13 plan.

13
14 Conclusion

15 Stephen DeGuire and Corey DeGuire were each individually
16 liable for noncontingent, liquidated, unsecured debts in excess
17 of \$383,175 on the petition date. Those debts exceed the
18 statutory limit under § 109(e). Consequently, Stephen DeGuire
19 and Corey DeGuire are ineligible to be debtors under Chapter 13
20 of the Bankruptcy Code.⁶ Therefore, based on the foregoing,

21 IT IS ORDERED that Maricopa's motion to dismiss Case No.
22 15-27614 is GRANTED IN PART AND DENIED IN PART. The motion is
23

24 ⁶Although ineligible under Chapter 13, nothing precludes
25 Stephen DeGuire and Corey DeGuire from filing petitions for
26 relief under Chapter 11 of the Bankruptcy Code. Nothing
27 precludes Sandra DeGuire from seeking dismissal of her Chapter 13
case and re-filing with Stephen DeGuire under Chapter 11 should
she so choose.

1 GRANTED as to Stephen DeGuire and DENIED as to Sandra DeGuire.

2 IT IS FURTHER ORDERED that based on the disposition of the
3 motion to dismiss in Case No. 15-27614, the motion to confirm the
4 plan filed October 27, 2015, in Case No. 15-27614 is DENIED
5 without prejudice and the plan filed in Case No. 15-27614 on
6 October 27, 2015, is not confirmed.

7 IT IS FURTHER ORDERED that Maricopa's motion to dismiss Case
8 No. 15-27615 is GRANTED, and that case is dismissed.

9 IT IS FURTHER ORDERED that based on the disposition of the
10 motion to dismiss in Case No. 15-27615, the motion to confirm the
11 plan filed October 27, 2015, in Case No. 15-27615 is DENIED as
12 moot, and the plan filed in Case No. 15-27615 on October 27,
13 2015, is not confirmed.

14 IT IS FURTHER ORDERED that the hearings set in Case Nos.
15 15-27614 and 15-27615 for January 20, 2016, on each of the above-
16 referenced matters are VACATED, and no appearance on January 20,
17 2016, is required.

18 Dated: January 19, 2016.

19
20 
21 UNITED STATES BANKRUPTCY JUDGE
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**INSTRUCTIONS TO CLERK OF COURT
SERVICE LIST**

The Clerk of Court is instructed to send the attached document, via the BNC, to the following parties:

Reno F.R. Fernandez
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